



Department of Energy
Western Area Power Administration
P.O. Box 281213
Lakewood, CO 80228-8213

September 8, 2005

Honorable Magalie Roman Salas
Office of the Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Room 1A, East
Washington, DC 20426

Re: Western Area Power Administration,
FERC Docket No. NJ05-1-001

Dear Secretary Salas:

Enclosed for filing with the Federal Energy Regulatory Commission is an electronic filing of the attached document entitled "Western Area Power Administration's Motion for Leave to Answer and Answer to the Protest of Calpine Corporation and Comment of Southwest Transmission Dependent Utility Group".

If you have any questions about this filing, please contact me at (720) 962-7021 or kliefel@wapa.gov.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, which appears to read "Ronald J. Klinefelter", is written over a horizontal line.

Ronald J. Klinefelter
Attorney
Office of General Counsel

Enclosure

**IN THE UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

United States Department of Energy)
Western Area Power Administration) Docket No. NJ05-1-001

**WESTERN AREA POWER ADMINISTRATION'S MOTION FOR
LEAVE TO ANSWER AND ANSWER TO THE PROTEST OF
CALPINE CORPORATION AND COMMENT OF SOUTHWEST
TRANSMISSION DEPENDENT UTILITY GROUP**

I. Motion for Leave to Answer

The Western Area Power Administration (Western), a Federal Power Marketing Administration of the United States Department of Energy, hereby moves for leave to answer the Calpine Corporation (Calpine) Protest and the comment of the Southwest Transmission Dependent Utility Group (Southwest). Through this motion, Western requests a waiver of Rule 213 of the Rules and Regulations as permitted pursuant to Rule 101 of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations, 18 C.F.R. §§ 385.213 and 385.101.

On August 25, 2005 Calpine filed a Protest and Southwest filed a Comment in this proceeding. Good cause

exists for waiver of Rule 213. This Answer will provide clarification in this proceeding and provide the Commission with an accurate record to review prior to issuing a decision. The Commission has found good cause for waiving Rule 213 in similar circumstances.¹

For these reasons, Western requests the Commission grant this motion requesting a waiver of Rule 213, and accept for filing Western's Answer to Calpine's Protest and the Comment of Southwest.

II. The Term "Rate Adjustment" Complies with FERC's July 6, 2005 Order

Calpine and Southwest have taken issue with Western's use of the term "rate adjustment" in its proposed language submitted on August 4, 2005 in Attachment J, Section 1.0 in Western's Open Access Transmission Tariff (OATT).

Both parties have suggested Western use the term "new rate" rather than "rate adjustment". Use of the term "rate adjustment" complies with the Commission's July 6, 2005 Order (Order).² The Order directs Western to add language that protects transmission customers when a new or revised

¹ Southwest Power Pool, Inc., 109 FERC ¶ 61,009 (2004), Great Lakes Transmission Limited Partnership, 80 FERC ¶ 61,105 (1997).

² Western Area Power Administration, 112 FERC ¶ 61,044 (2005).

formula or a new rate is proposed. Western used the term "rate adjustment" because it is specifically defined in the regulations adopted by the Deputy Secretary of the United States Department of Energy that govern Western's rate development.

The regulations governing the development of transmission rates are found in 10 C.F.R. Part 903. The definition section of these regulations state that a rate adjustment includes the development of new rates. In accordance with 10 C.F.R. § 903.2(m), a rate adjustment is defined as follows:

Rate adjustment means a change in an existing rate or rates, or the establishment of a rate or rates for a new service. It does not include a change in rate schedule provisions or in contract terms, other than changes in the price per unit of service, nor does it include changes in the monetary charge pursuant to a formula stated in a rate schedule or a contract.

The Commission should reject the request to deviate from this defined term because it has specific applicability to Western, it complies with the Commission Order and, finally, it incorporates the "new rate" the comment of Southwest and the second issue in Calpine's Protest.

III. Termination with a Rate Increase and the Appropriate Standard of Review

Calpine also protested Western's use of an increase requirement in Attachment J, Section 1.0. Although Calpine's initial intervention in this proceeding recognized that Western was not subject to the Commission's just and reasonable ratemaking requirements under section 205 of the Federal Power Act, 16 U.S.C. § 824(d)³, it seems to infer differently in its Protest dated August 25, 2005. Calpine states that " . . .there may be circumstances in which WAPA decreases a charge technically, but where the revised rate remains inflated above reasonable and appropriate levels."⁴

It is important to clarify that there is no just and reasonable review of Western's rates as that term is defined under the Federal Power Act. Western submits the lowest possible rates consistent with sound business principles for review and approval by the Commission to verify that they are consistent with the standards of

³ Page 4, Motion to for Leave to Intervene Out-of-time and Protest of Calpine Corporation, dated June 3, 2005.

⁴ Page 2, Protest of Calpine Corporation, dated August 25, 2005.

review set forth in Paragraph 1.3 of Delegation Order No. 00-037.00.

To meet these obligations, Western develops its rates pursuant to the Department of Energy Organization Act, 42 U.S.C. § 7101, the Reclamation Act of 1902, 43 U.S.C. § 371, the Flood Control Act of 1944, 16 U.C.C. § 825(s), and Acts amendatory or supplementary thereof, as well as the regulations found at 10 C.F.R. Part 903, and Department of Energy Delegation Order No. 00-037.00.

When the Commission reviews Western's rates in accordance with 18 C.F.R Part 300, it uses an arbitrary and capricious standard of review, not a just and reasonable standard of review. This standard of review has been well established under Department of Energy Delegation Order No. 00-037.00, as well as numerous Commission orders.⁵

Western's insertion of the term increase into Attachment J, Section 1.0 allows transmission customers to terminate service if there was a rate increase, but does not allow termination if there was a rate decrease. Western's rates are basically cost of service rates.

⁵ See, e.g., United States Department of Energy - Western Area Power Administration (Pick-Sloan Missouri Basin Program - Eastern Division Project), 85 FERC ¶ 61,273 (1998).

Western sets the lowest possible rates consistent with sound business principles, and FERC approves those initial rates. If the rate decreases, the customer will not be harmed and in fact will be in a better situation than it was at the time of contract execution.

Western is unaware of the Commission requiring termination provisions in other non-jurisdictional entities' tariffs. Requiring a right to terminate in Western's OATT goes beyond what the Commission has required for other non-jurisdictional entities in their safe-harbor filings. By requiring Western to allow transmission customers a right to termination in its transmission contracts, the Commission is holding Western to a higher standard than it requires of other non-jurisdictional entities. Western believes that this is inconsistent treatment among non-jurisdictional entities.

As outlined above, FERC has a role in the review and approval of Western's rates and transmission customers have the ability to become involved the rate setting process. The Commission does not have review over the development and components of the transmission rates of most non-jurisdictional entities. Western believes that allowing a customer to terminate only when the rate adjustment results

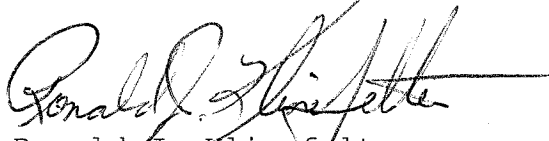
in a rate increase is an equitable solution to address the concern outlined in the Order while not requiring Western's OATT to be superior to the pro-forma tariff.

IV. CONCLUSION

Western respectfully requests that the Commission grant its Motion for Leave to file this answer and deny Calpine's Protest for the reasons stated herein. Further, Western requests that the Commission approve the revised Attachment A, Section 1.0 language provided in Western's August 4, 2005 filing.

Dated this 8th day of September, 2005.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ronald J. Klinefelter", with a long horizontal flourish extending to the right.


Ronald J. Klinefelter
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Lakewood, Colorado, this 8th day of September, 2005.

By:


Rosemarie Rodriguez
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